

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
Second Baptist Church)	File No. BPET-19960520KE
)	Facility ID No. 82497
Community Television Educators)	File No. BPET-19960923KH
)	Facility ID No. 83492
Broadcasting for the Challenged, Inc.)	File No. BPET-19961001KG
)	Facility ID No. 84211
For a Construction Permit for a New)	
Noncommercial Educational Television)	
Station on Channel *20, Hot Springs, Arkansas)	

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2003

Released: October 23, 2003

By the Commission:

1 The Commission has before it for consideration the above-captioned mutually exclusive applications of the Second Baptist Church (SBC), Community Television Educators (CTE) and Broadcasting for the Challenged, Inc. (BCI), each seeking a construction permit for a new noncommercial educational television station to operate on Channel *20 at Hot Springs, Arkansas.¹

MUTUALLY EXCLUSIVE SELECTION PROCESS

2. In cases of mutually exclusive applications for new noncommercial educational (NCE) television stations to operate on reserved channels, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of seven merit points based on four criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which this spectrum has been reserved.² First, three points are awarded to applicants who have been local and

¹ On March 22, 2001, the Bureau issued a Public Notice announcing a deadline of June 4, 2001, by which applicants in closed groups of noncommercial educational broadcast station applications must file either settlements/minor technical amendments to resolve application conflicts, or supplements to claim points under the newly-adopted NCE comparative standard discussed below. *See Public Notice*, 16 FCC Rcd 6893 (2001). The Public Notice also established June 4, 2001, as the date on which applicants' non-technical comparative qualifications would be generally fixed. The Bureau subsequently extended the deadline for settlements, engineering solutions and point supplements through July 19, 2001. *See Public Notice*, 16 FCC Rcd 10892 (2001). SBC, CTE and BCI filed point supplements by the July 19th deadline.

² *Report and Order, Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000); *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 10549 (2001); *Memorandum Opinion and Second Order on Reconsideration*, 17 FCC Rcd 13132 (2002); *appeal pending, American Family Association, Inc., et al. v. FCC & USA*, Nos. 00-1310, et al. (D.C. Circuit); *see also* 47 C.F.R. § 73.7003.

established for at least two years.³ Applicants with a headquarters, campus, or 75% of board member residences within 25 miles of the reference coordinates of the community of license are considered local,⁴ and governmental units are considered local within their areas of jurisdiction. Second, two points are awarded for local diversity of ownership if there is no overlap of the principal community contour of the proposed station and any other station attributable to the applicant, and the applicant's governing documents include a provision to maintain that diversity in the future. Third, two points will be awarded for certain state-wide networks providing programming to accredited schools, which cannot claim a credit for local diversity of ownership. Fourth, one point is awarded to an applicant if its proposed area and population is 10% greater than the next best proposal, or two points if 25% greater than the next best proposal. The tentative selectee is the applicant with the highest score.

3. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Established Local Applicant. SBC was founded in 1908 and has continuously occupied its principal office in Hot Springs since its founding. SBC also certified that all of the members of its governing board have for the preceding two years maintained their primary residence at a location within 25 miles of Hot Springs and that its governing documents require the maintenance of this local characteristic of the board. Thus, SBC is entitled to three points as an established local applicant. CTE and BCI are nongovernmental entities headquartered in Dallas, Texas and Memphis, Tennessee, respectively, and do not have governing boards where at least 75% of the members reside within 25 miles of the reference coordinates of Hot Springs. Accordingly, CTE and BCI are entitled to no points.

Diversity of Ownership. SBC, CTE and BCI all certify that the principal community contour of their proposed stations do not overlap the principal community contour of any other television station in which any party to the application has an attributable interest, that their governing documents require that such diversity be maintained, and that they have placed documentation of this diversity in a local public inspection file and submitted copies to the Commission. Accordingly, each is entitled to two points.

State-wide Networks. None of the applicants claim state-wide network points under Section 73.7003(b) of the Commission's rules.

Technical Parameters. SBC proposes to operate at 5000 kw power at a height of 345 meters above average terrain, with its Grade B contour encompassing 19,588 square kilometers with a population of 683,427. CTE proposes to operate at 5000 kw power at a height of 259 meters above average terrain, with its Grade B contour encompassing 14,048 square kilometers with a population 750,429. BCI proposes to operate at 2570 kw power at a height of 412 meters above average terrain, with its Grade B contour encompassing 23,562 square kilometers with a population of 851,881. BCI is entitled to one point under this criterion since both the area and population it proposes to serve is 10% greater than that of SBC or CTE.

4. **Total.** SBC is entitled to three points as an established local entity and two points for diversity of ownership, for a total of five points. BCI is entitled to two points for diversity of ownership and one point for serving the largest area and population, for a total of three points. CTE is entitled to two points for diversity of ownership. Thus, SBC is the tentative selectee.

³ NCE organizations involved in pending closed group proceedings, such as the applicants here, are considered "established" if they have operated continuously as local entities since June 4, 1999.

⁴ An applicant relying on local board residence to claim points as an established local applicant must demonstrate that its governing documents, *i.e.*, by-laws, require that such localism be maintained for at least four years of station operations.

ACCEPTABILITY STUDY

5. Once we select a tentative selectee pursuant to our mutually exclusive selection process, we consider whether the tentative selectee's application has defects. If a tentative selectee's application is found unacceptable, it is returned to the applicant. The applicant is then given one opportunity to submit a curative amendment, provided that the amendment is minor and that the application, as amended, has the same number of qualitative points as originally claimed, or more than the points claimed by the next highest applicant. If found acceptable, the tentative selectee's application is placed on a Broadcast Applications Public Notice, and petitions to deny may be filed within 30 days following release of the public notice.

6. Noncommercial educational broadcast stations will be licensed only to "nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service."⁵ SBC owns and operates an accredited school for students through 11th grade and has certified its compliance with these requirements. We also find the application to be complete and in compliance with the Commission's technical rules.

7. Based upon the record before us, SBC appears to be fully qualified to become the licensee of a new noncommercial educational television station at Hot Springs, Arkansas. We conclude that grant of its application would serve the public interest, convenience and necessity. Accordingly, the staff is directed to issue a public notice announcing SBC's acceptability and establishing a deadline for the filing of petitions to deny.⁶

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ See 47 C.F.R. Sec. 73.621(a).

⁶ In view of the pending appeal of our mutually exclusive selection process, any subsequent grant of SBC's application will be conditioned on the outcome of *American Family Association, Inc., et al. v. FCC & USA, et al.*, Nos. 00-1310, et al. (D.C. Circuit).